FOR MYSORE STATE

Public Works (195 4) Department.

Ms. SERIES.

G.O. NO. Ms.264

264

Dated the 25th January 1954.

[Despatch Abstract.]

Ports - Mangalore - North Reclamation area - Plot granted to Sri M. Srinivasa Nayak on an order of grant - Cancellation and proceeding under Land Encroachment Act - Appeal petition - Rejected.

16 FEB 1953

From
A.MUDIE, Esq.,
State Port Officer,
P.B.No.13,
Madras 1.

To
The Secretary to Government,
Public Works Department,
Madras.

No.1755 G1/52-6 dated 9-2-- 1953.

Sir,

Sub:- Ports - Mangalore - North Reclamation area - Plot granted to Sri M. Srinivasa Nayak on an Order of Grant - Violation of conditions - cancellation of Grant and taking possession of - Recourse to the provisions of the Land Encroachment Act.

Ref:- Government Memo No.2282-F/48-11, P.W., dated 26-6-50 and further correspondence resting with this office Post Copy of Telephonic Message to Government No.1795 G1/50-13, dated 21-12-50.

In continuation of this office Post copy of Telephonic Message to Government cited, I forward herewith for the information of Government a copy of proceedings No.N.Dis.5222/52, dated 12-7-52 of the Collector of South Kanara, rejecting the petition of of Sri Manel Srinivas Nayak received with endorsement No.1298/52-7, dated 18-7-52 from the Port Offi- Mangalore.

The Board of Revenue has also rejected the revision petiti- of Sri Manel Srinivas Nayak - Vide Copy of B.P.Rt. No.302, date- -1-53 enclosed.

Yours faithfully,

State Port Officer.

P.T.O.
Encls. Copy of P.O's Endt.No.1298/52-7,d.18-7-52

Proceedings of the Collector of South Kanara dated 12-7-195
Sri A.R. Rajaratnam B.A.

D.Dis. 5222/52.

Encroachment: Land - Mangalore Taluk - Casba Bazaar village - T.S.No.642/C Peramboke - Port land - Eviction - Appeal - Rejected.

Read:- 1 Petition dated 19-2-1952 from Sri Manel Srinivas Nayak Mangalore.
2. From the R.D.O.Mangalore N.Dis.1746/52 dated 18-4-1952.
3. From the Port Officer No.1298/52-6, dated 1-7-1952.

The Collector has perused the connected records and sees no reason to interfere with the order of eviction. The appeal is rejected.

Sd. x
Huzur Sarishtedar.

To

Sri Manel Srinivas Nayak s/o Manel Annappa Nayak residing in Casba Bazaar of Mangalore town (By post).
The Tahsildar Mangalore with E.C.86/60,
To the R.D.O. Mangalore with L.Dis.8722/51.
Copy to the Port Officer, Mangalore.

II.

No.1298/52-7-

Submitted to the State Port Officer, Madras with reference to his remin[illegible] No.1755 G1/52-1, dated 21-5-1952 and in continuation of this office End[illegible] 1298/52-6, dated 1-7-1952, for information.

Port Office, Mangalore,
D. 18th July 1952.

[illegible]rnish,
[illegible]fficer.

(3)

Copy of B.P.Rt. No.302, dated 10-1-1953 of the Board of Revenue, Madras.

Sub:- Encroachment - Land (South Kanara District) - Mangalore Taluk Casba Bazaar village - T.S.No.642/C- Poromboke portland - Eviction - Revision petition of Srinivasa Nayak - Rejected. Petition from Sri M. Srinivasa Nayak dated 24-7-1952. Letter from the Collector of S.K. Ref.No.A1.22501/52-3, dated 24-7-1952.

The Board has perused the connected records and sees no reason to interfere with the Collector's order appealed against. The petition is rejected and the stay granted in Board's Ref.6493/52-1, dated 29-8-52 is vacated.

Sd.
Asst. Secretary.

To

x x

D.Dis.22501/52.

Copy communicated.
(By Order)

S.K.Collector's office,
Mangalore, d.20-1-1953.

Sd.
Huzur Sheristedar.

To the Tahsildar, Mangalore with E.C.85/60.
Copy to the R.D.O. Mangalore.
Copy to the Port Officer, Mangalore.

(True copy)

State Port Officer.

22642

X

(5)

SECRETARY TO GOVERNMENT 7-MAR1953 PUBLIC WORKS DEPARTMENT

MINISTER FOR PUBLIC WORKS 7 MAR GOVT. OF MADRAS

To

The Hon'ble Minister for Public Works,
Government of Madras,
M a d r a s.

M. Srinivasa Nayak, son of M. Annappa Nayak,
residing in Pentlandpeta, Mangalore) Petitio

The petitioner above-named begs to state as follows:-

ABDL. ASST. SECRETARY TO G... 9-MAR1953 PUBLIC WORKS DEPARTMENT

S.P.W. Issue on 3rd stamp. Plans call in 7 days. Report ... 7.3.53

1. The petitioner on 7- 11- 1945 obtained from the Mangalore Port Authorities represented by the Presidency Port Officer a small plot of land in the port area of an extent of 5 cents demarcated as 642/C of Kasba Bazar Village of Mangalore Town for a period of 25 years on an annual rental of Rs. 126/-. The said piece of land is a small part of ground reclaimed from the river and the Port authorities have leased portions of same by convertion to holders of adjoining wargland. The petitioner is the owner of warg land T.S.No. 437 of 8th ward and the piece of port land in question being the water frontage of T.S. No.437 of 8th Ward, has been leased out to the petitioner in conformity with the above mentioned convention. The petitioner purchased the warg land T.S.No.437 from Sri Ullal Rama Rao, Advocate, under a registered sale deed dated 27- 10- 1945. The port land 642/C had been leased by the Port authorities to the previous owner, the aforesaid Sri U. Rama Rao, who was in possession of it as a part of his holding and was made over to the petitioner with the previous permission of the Port authorties. Accordingly a fresh lease for 25 years was entered into between the Presidency Port Officer and the petitioner.

2. The Port authorities have granted on lease reclaimed land to a large number of persons, the sole criterion being

that they are owners of adjoining warg lands, and the petitioner's lease is only one among over 20 to 25 like leases.

3. The petitioner is in actual possession of the said plot ever since then and there are valuable and costly buildings in the said plot of a value of not less than Rs. 10,000/-.

4. The Presidency Port Officer, as per his proceedings dated 14- 7- 1950 passed in 1795/4L/50/2 seems to have passed an order cancelling the lease and ordering resumption of land on the ground that the petitioner has infringed the conditions of the lease.

5. The order of the Presidency Port Officer seems to have been passed on the basis that the petitioner has sub-let the land to the South Kanara Agriculturists's-Co-operative Marketing Society, Ltd. and Sri Ullal Hari Vaman Nayak. This basis of the Port Officer's order is entirely wrong. The petitioner has not sub-let the land to either party. The S.K.A.C.M.Society, Ltd. is a tenant of the petitioner in respect of the adjoining warg land belonging to the petitioner and what has been leased to the Society is the warg land belonging to the petitioner in T.S.No. 437 and not the land in question i.e. 642/C. A copy of the lease deed is enclosed as Appendix hereto. No rent is received from the Society in respect of the Port land and the entire rent received from the Society in respect of the warg land situated inside the Municipal limits is subject to Municipal tax. Sri U. Hari Vaman Nayak was a tenant on a portion of

the premises long before 7- 11- 1945, the date on which the petitioner's lease with the Port Authorities began and even when Sri U. Rama Rao - petitioner's vendor - was the lessee with the full knowledge and permission of the Port Authorities. The petitioner got only symbolic possession of the warg land and the port land and Sri U. Hari Vaman Nayak continued as a tenant holding over, who could not be evicted inspite of repeated efforts owing to provisions of Rent Control Act. As Sri U.Hari Vaman Nayak was a tenant of the port land under Sri U. Rama Rao, the previous lessee, with the permission and with due knowledge of the Port authorities, it can under no circumstances be held that the petitioner has sub-let the land. No notice of the intended proceedings having been given to the petitioner, he was unable to place these facts before the Presidency Port Officer. Hence it is clear that there has been no sub-letting and as a matter of fact there is no sub-letting by the petitioner of the land in question.

6. The Presidency Port Officer has passed his order on the ground that the petitioner has sub-let and thus violated the provisions of the clauses of the lease, as given herein below:

* * * *

Clause (3) "The grantee shall not transfer to any other person the right hereby conveyed to him without sanction of the authorities which has made the grant".

* * * *

Clause (6) "The grantee shall not use the land or suffer it to be used except for the purpose of Store - shed which are the following:- storing cargo landed or intended for shipment and for sale".

Clause (13) "The grantee shall not without the previous written sanction of the sanctioning authorities permit any person to use the land or structure thereon or any portion of the land or structure except as provided in Condition 6".

7. It will thus be seen that none of the provisions of the above conditions have been violated. There is absolutely no provision in any of the clauses prohibiting sub-letting. Clause 3 of the grant prohibits transfer of the right conveyed to the petitioner under the grant and the right has not in any manner been transferred. What the clause prohibits is an out and out assignment or transfer and not sub-letting.

8. Clause 6 of the grant prohibits the use of the premises for any purpose other than the store shed and directs that the lessee should not use it or <u>suffer it to be used</u> for any purposes other than the store shed. This clause not only does not prohibit sub-letting but by implication, especially because of the words "suffer it to be used", permits sub-letting for being used as store shed as specifically embodies in the lease deed.

9. Clause 13 is only an amplification of Clause 6 and prohibits the lessee from permitting any person to use the land except as permitted in Clause 6 which by implication means that he can permit sub-letting for any purpose provided in Clause 6. .

10. Thus there is no prohibition in the lease against sub-letting and even then the petitioner has not sub-let

the lease-hold. On both these grounds the lease is not liable to be cancelled and the order of the Presidenc Port Officer cancelling the lease is wrong and unjust. Further, the Presidency Port Officer himself being a contracting party cancellation of the lease by him, without any adjudication by a competant III party tribunal and without even giving petitioner an opportunity to show that the conditions of the lease have not been violated is opposed to all principles of natural justice and fundamental rights.

11. On receiving the order of the Presidency Port Officer, cancelling the lease, the petitioner applied to the Presidency Port Officer by petition d/-24-7-1950 stating all the above facts and requesting that the order dated 14- 7- 1950 passed in No. 1795/GL 50-52 may be cancelled, set aside and petitioner permitted to continue as per lease deed. As the Presidency Port Officer happened to come to Mangalore on 25- 7- 1950 the petitioner also presented to him a copy of the petition personally. Unfortunately noe orders have been passed on the petition and the petitioner has not been vouchsafed any reply till now.

12. Meanwhile evidently at the request of the Port Authorities, the District Collector of South Kanara has started encroachment proceedings under the Land Encroachment Act and inspite of the petitioner applying both to the Mangalore Revenue Divisional Officer before whom the encroachment proceedings are pending as E.C. 86/1950 and the District Collector of South Kanara, they have refused

to drop the proceedings and the petitioner is sought to be ousted from the land. Against the said order the petitioner applied to the Board of Revenue praying that the order of eviction passed in E.C. No. 86/1950 may be set aside. But the Revenue Board in its order dated 10- 1- 1953 passed in B.P. Rt. No. 302 rejected the appea holding that it sees no reason to interfere with the Collector's order.

13. As stated above, the lease is for a term of 25 years till 7- 11- 1970. The petitioner has not violated any conditions of the lease and the order of the Presiden Port Officer cancelling the lease is wrong and unjust. Practically every other person who has been leased the po land, has sub-let the land or premises constructed thereo for purposes other than those for which the Port land is intended and put to uses such as Hotels, Banks, Steamer Companies, and this has been suffered under the very nos of the Port authorities who have not taken any action against them. Only the petitioner has been singled out for this drastic treatment for no fault of his. The lan leased to the petitioner is not required for Port purpose but is set apart for the use of owners of warg land adjoin ing thereto, who is the petitioner himself. There are buildings on the land worth about Rs. 10,000/- belonging to the petitioner. The petitioner will be put to great difficulty, hardship and loss if the lease is cancelled and the petitioner is ousted.

14. The petitioner, therefore, prays that the order f the Presidency Port Officer dated 14- 7- 1950 passed n No. 1795/GL/50-2 cancelling the lease dated 7-11-1945

granted to petitioner in respect of land covered by T.S. No.642/C of Kasba Bazar Village, Mangalore Town, South Kanara District, may be kindly set aside and the petitioner permitted to continue as lessee till the expiry of the lease period on 7- 11- 1970, or in the alternative, if this is found impossible, orders may kindly be passed ordering the re-leasing of the said plot to petitioner as he is entitled to the use of the said plot by convention being the owner of the adjoining warg land and pending final orders on the petition further proceedings in E.C. 86/50 on the file of the Mangalore Revenue Divisional Officer seeking to oust petitioner from T.S.No.642/C of Kasba Bazar Village, Mangalore Town may be kindly ordered to be stayed.

Mangalore,
7-3-1953.

K. Srinivasa Nayak.
Petitioner.

for personal attention
Special

P.W.D.(F)

Memo No. ~~22642/53-F~~ 14047 F/53-2 dated 14.3.53

Sub: Ports -Mangalore -North Reclamation area - Cancellation of grant of lease of Port land TS.642/C to Sri M. Srinivasa Nayak -Eviction under Land Encroachment Act- Stay orders- Issued.

Ref: (1) From the S.P.O. No.1755 G1/52-6 dated 9-2-53
(2) From Sri M. Srinivasa Nayak, Mangalore, petition dated 7-3-53 to M.(P.W.)

Copies of the petition dated 7-3-53 from Sri M. Srinivasa Nayak of Mangalore on the subject cit are forwarded to the S.P.O. and the Collector of S.Kanara for remarks through the Board of Revenue. They are requested to submit the relevant records along with their reports.

2. The Collr. of S.Kanara is requested to stay proceedings against the petitioner under the Land Encroachment Act until further orders are iss by the Govt. in the matter.

Appd 15.3.53

To the S.P.O.
To the Collr. of S.Kanara.
Copy to Bd. of Rev.
(with copy of pp.5-17 c.f. to all)

15.3.53

14.3.53

13353 - WR - 13.3.53

Memo 14047 - F/53-3 d 22.4.53

Sub: As overleaf

Ref: Govt Memo No 14047 F/53-2 d 14.3.53

To the attention of the S.P.O and the Collector of S. Kanara is invited to the memo cited and they are requested to expedite their replies

22/4/53

22.4.53

84 / 24-4

Fig 2nd

To
The S P O
The Collector of S Kan
Copy to Bd of Rev

Post copy of Telephonic Message.

From the State Port Officer, Madras,
To the Secretary to Government, Public Works Department, Madras,
No.958 Gl/53-5, dated 14-5-53.

Sub:- Ports - Mangalore - North Reclamation area - Cancellation of grant of lease of port land T.S.642/C to Sri M.Srinivasa Nayak - Eviction under Land Encroachment Act - Stay Orders.

Ref:- Government Memo No.14047 F/53-3, P.W. dated 22-4-53.

A reply to Government Memo No.22642/53-F, P.W.dated 14-3-53 has already been sent to Government through the Board of Revenue, Madras with my letter No.958 Gl/53-2, dated 17-4-53 marked "For personal attention" - "Special". It is presumed that Government Memo No.14047 F/53-2, P.W. dated 14-3-53 referred to, is an error for Government Memo No.22642/53-F, P.W. dated 14-3-53. Please confirm.

14/5

State Port Officer.

Memo 14047 F/53-4 dated 28.5.53

Sub. Ports - Rayalaseema - Nellore - Reclamation area
Cancellation of grant of lease of pot-land
TS 642/C to Sri M. Srinivasa Nayak.
- Eviction under Land Encroachment Act - Stay
orders --

Ref (1) Govt Memo. 22642 F/53. dt 14.3.53.
(2) From the S.P.O. 958 QL/53-2 dt 17.4.53 - (P.T. ...)
Submitted to Govt through the Bd of Rev

The attention of the Bd of Rev is invited to the
referenced and it is requested to expedite the submission
of its remarks in the matter.
~~of the report with the facts recorded~~

2) The S.P.O is informed that ~~No 22642/53 is an~~
~~error for 14047/53~~ the presumption in his
~~T.MMO. 958 QL 53-5 dt 14.4.53~~
~~letter~~ / cited is Correct.

27.5.53

ADDL. ASST. SECRETARY TO GOVT.
8 - JUN
PUBLIC WORKS DEPT.

23

REVENUE DEPARTMENT.
Subject.

Ports - Mangalore - North Reclamation area cancellation of grant of lease of Port land T.S. 642/C to Sri M. Srinivasa Nayak - Eviction under and Encroachment Act Stay orders.

Station: Madras. Ref. E. 1860/53-2 Dated 6-6-53.

Sri W.R.S. Sattianathan, I.C.S. Commr. of Land Revenue.
Sri C.S.Krishna Moorthy, I.A.S., Secretary Bd. of Rev.

Read: Govt. Memo. No. 14047 F/53-4 P.W.D. dated 28-5-53. Received

REFERENCE:

The state Port Officer's letter No. 958-41/53-2 dated 17-4-53 has been received in the Board's Office. The remarks of the Collector of South Kanara called for in Government Memo. No. 22642/53F dated 14-3-53. have not yet been received and he has been reminded. The Board's remarks will be submitted on receipt of the Collector's remarks.

For Secretary

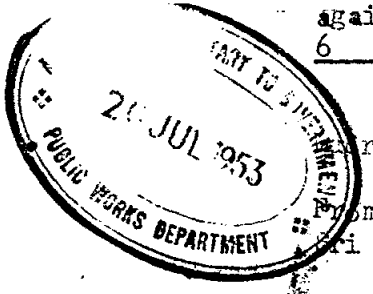
To
The Secretary to Government
Public Works Department.
P.B.No. 13. Madras.

Copy to the State Port Officer for information.

PW(F)
As above may be awaited till 10.7.53
10-6-53

Revenue Department
Subject.

LEASE - Land (South Kanara) Mangalore Taluk- Casba Bazaar village-T.S.No. 642/C- Grant of Port land to Sri Srinivasa Nayak- Cancellation - Appeal against Board's orders - Report-Submitted.
6



66419

Ref.No. B. 4979/53-4
Dated 11th July 1953.

From
Sri W.R.S.Sattianathan, I.C.S., Commissioner of Land Revenue, Madras.

Sri C.S. Krishna Moorthi, I.A.S., Secretary, Board of Revenue, Madras.

Read:-Govt.Memo.No. 22642-/53-F P.W. dated 14-3-53.
From the State Port Officer, No. 958 G1/53-2 dated 17-4-53.
Govt.Memo.No.14047-F/53-3 P.W. dated 22-4-53.
Govt.Endt.No. 42116-F/53-1 P.W. dated 8-5-53.
From the Collector of South Kanara Ref.B.2.6500/53 dated 18-6-53.

Reference:

Submitted to the Government.

2/- B.P.Rt.No. 302 dated 10-1-53 in which the petition to the Board was disposed of is submitted. The Board has no further remarks to offer.

3/- *** ***

For Secretary.

To the Secretary to Government, P.Works Department, Madras
paras 1 and 2 only with B.P.Rt.No.302 dt.10-1-53 and a grant order and the enclosures.
To the Collector of South Kanara para 3 only.

ym. 11/7/

p.t.o.

List of records.

1.D.Dis.12900/53 dated 5-5-50, D.Dis. 17341/50 datee 8-7-50
D.Dis. 18427/50 dated 21-7-50, D.Dis. 21975/50 dated 30-10-50
D.Dis. 5222/52 dated 12-7-52, L.Dis.20174/52 dated 14-10-52,
D.Dis. 22501/52 dated 20-1-53 and E.C. 86/60 are enclosed.

State
Copy of/Port Officer's letter No. 958-G1/53-2 dated 17-4-53.

Sub:- Ports- Mangalore-North Reclamation area - Cancellation of grant lease of Port lands- T.S.No. 642/C to Sri M.Srinivasa Nayak-Evic under Land Encroachment- Act-Stay orders.
Ref:- Govt.Memo.No. 22642/53 F.M.P.W. dated 14-3-53.

With reference to the Government Memorandum cited, I forward her a copy of letter No. 881/53-1 dated 23-3-1953 (with its enclosures) r from the Port Officer, Mangalore, on the above subject. In this comm I have to state that the grantee has made huge profits by subletting buildings constructed on port land contrary to the provisions of the This is a matter to be highly deprecated and early steps taken to put stop to such illegal profiteering. By investing Rs.10,000/- towards t construction of a building on the Port land, the grantee is reported be making a profit of about Rs. 450/- per mensem, that is about 3½ tir the annual rent of Rs.126/- payable by the grantee, to the detriment c the Mangalore Landing and Shipping Fund, which fund if it had construc the building would earn the profit. In short, such subletting contra to the provisions of the grant is a loss of revenue to the port and pr to the grantee at the cost of Port Revenue. This is not the only case of the kind; there are several similar cases. Unless suitable action is taken in time, such cases of subletting would increase and get out of control.

A copy of the Grant order issued to the petitioner is herewith enclosed.

-true copy-

Copy of Port Officer, Mangalore letter No. 881/53-1 to the State Port Officer, Madras dated the 23rd March 1953.

Sub:-Mangalore Port-Land within port limits leased for marine purposes North reclamation Area- Plot measuring 2044 Sq.ft. granted in fav of Sri M.Srinivasa Nayak for a period of 25 years from 7-11-1945 violation of certain conditions of the order of grant-cancellatio and eviction - appeal-Remarks.
Ref:-Govt.P.W.D.Memo.No. 22642/53-F dated 14-3-53 and State Port Offic Endt.No. 958-G1/53-1 dated 17th March 1953.

The Port land in question measuring 2044 sq.ft. was leased out in favour of Sri M.Srinivasa Nayak, Merchant, Bunder, Mangalore under an of grant for a period of 25 years from 7-11-1945 on an annual rental o Rs. 126/- As Sri M.Srinivasa Nayak violated conditions 3,6 and 13 of t aforesaid order of grant by subletting the land and structures thereon a luerative rent of Rs. 285/- per annum and Rs. 300/- per annum to two parties, namely the South Kanara Agricultural Co-operative Marketing Society with effect from 19-10-1946 and Sri. Ullal Hari Vaman Nayak of Mangalore respectively, he was asked to show the authority under which he sublet the structures, thereon, in this office Memo.No.23-78/47-3 dated 31-10-1947 (copy enclosed). On receipt of his replies dated 8-11-1947 and 3-2-1948 (copies enclosed) the subject was referred to t State Port Officer, Madras, in this office letter No. 1465/48 dated 11 (copy enclosed who in his Memo.No. 1786 G1/48-1 dated 31-5-1948 (copy enclosed) directed me to consult and submit the views of the District Collector in the Matter. Accordingly, the matter was referred to the Collector of South Kanara. The Collector, in his letter Roc.No.12 /0)/ dated 27-2-50 (copy enclosed) addressed to the Government expressed his opinion, that the grantee has violated conditions 3,6, and 13 of the or of Grant, by subletting the land and structures, thereon, and, that th State Port Officer, Madras, who is the competent authority can take necessary action, in this regard.

With reference to Government Memorandum No. 2282/F/49-11 P.W. dated 26-6-50, the State Port Officer, cancelled the order of grant in question, in his proceedings No. 1795-G1/50-2 dated 14-7-50 (copy enclosed), and authorised the Port Officer, Mangalore to assume control of all the land, buildings, fences and structures thereon, fro the said Sri M.Srinivas Nayak, under clause 16 of the said order of gr

As per the aforesaid proceedings, Sri M.Srinivas Nayak, was dire to hand over the possession of the land and structures thereon to this department in this office Registered Memo.No.1900/50-4 dated 19-7-50 (copy enclosed). As the grantee failed to surrender the land etc.,

as directed, the Revenue Department was addressed to institute eviction proc
edings against him under the Madras Land Encroachment Act 1905. Sri M.Srini
Nayak has not been evicted from the said land and structures, as yet, as he
preferred appeals against the eviction orders.

With reference to the copy of petition dated 7-3-1953 from Sri M.Srinivas
Nayak to the Hon'ble Minister of Public Works, Madras referred to in Governm
Memorandum No. 22642/53-F dated 14-3-53, I offer the following remarks, seria

Para 1: No remarks.
Para 2 do
Para 3: do
Para 4: As the petitioner has violated conditions 3,6 and 13 of the order of grant in question, the State Port Officer, Madras, in his proceedings No 1795/G1/50-2 dated 14-7-50, cancelled the order of grant, communicating a cop thereof (proceedings) to the petitioner direct.

Para 5: In his letter dated 8-11-1947 and 3-2-1948 (copies enclosed) Sri M. Srinivasa Nayak did not put forth any such argument as has been done in para 5 of the petition under reference.

The order of grant containing special permission to ~~sublet~~ sublet the buildings, issued in favour of Sri U.Rama Rao was cancelled while issuing a fresh grant in favour of Sri Srinivas Nayak. The fresh order of grant thus issued does not contain any special clause or conditions whereby Sri M. Srinivas Nayak is authorised to sublet the buildings, and being fully aware of this, when executing the fresh order of grant, it is not known why Sri M. Srinivasa Nayak then failed to bring to the notice of the assigning authori these facts and got the special clause of 'subletting the buildings' embodie in the grant. It is also not understood, how Sri M.Srinivas Nayak inherits the rights of the subletting when the order of such grant has been cancelled. As per condition 16 of the order of grant, it is not obligatory on the part of the assigning authority(namely the State Port Officer,Madras) to issue an notice of intended proceedings of revoking the order of grant. But however, this office Memo.No. 2378/47-3 dated 31-10-47 and Memo.No. 1465/48-2 dated 21-6-1948 (copies enclosed) the controvention of the said conditions of the o of grant was duly brought to the notice of the petitioner. But the petitione did not reply to this office above Memorandum. Hence, the petitioner's contention that no notice of intended proceedings was given to him is unacceptab

Para 6.
Para 7.
Para 8.
Para 9. } I have no remarks to offer as these are matters of legal opinion.

Para 10- A kind reference is again invited to this office Memo.No.1465/4 dated 21-6-1948 (copy enclosed), No reply was received from the petitioner f the same.

Para 11- The petition referred to was forwarded to the Collector of Sou Kanara in this office letter No.1900/50-8 dated 23-8-50(copy enclosed) for hi remarks, as ordered by the State Port Officer, Madras in his Memo.No.1795-G1/ dated 7-8-1950 (copy enclosed). The Collector in his D.Dis.No. 21975/50 dated 30-10-50(copy enclosed) opined that provisions of the Madras Land Encro. Act 1905, may be employed in this case, for instituing eviction proceedings against the petitioner, but did not offer his remarks about the points raised in petitioner's appeal dated 24-7-50. The Collector has been reminded in the matter, again, and his reply is still awaited.

Para 12: As ordered by the State Port Officer, Madras in his Memo.1795G1 50-10 dated 30-11-1950(copy enclosed) the Tahsildar, Mangalore has been addressed to proceed with the eviction under the Madras Land Encroachment Act 1905, in this office letter No. 1900/50-16 dated 31-1-50(copy enclosed)

Para 13: Seven other grantees and licencees of portland, on the North Reclamation Area of this Port, have sublet the buildings constructed on the port land. The question of cancellation of these orders of grant and licences and eviction thereafter, has already been taken up with the State Port Officer, Madras and the Collector of South Kanara vide correspondence in State Port Officer's Memo.No.1754-G1/52-8 dated 7-3-1953. One party, , Messrs S.P.Nayak & Co;, Ltd., Mangalore who are grantees of portland uring 3700 sq.ft. on the North Reclamation sought permission of the Conservancy Board, Mangalore to sublet the premises of their building

and permission was granted to them in State Port Officer's memo No. 51 Gl 50-13 dated 14-9-1951.

I do agree that it is a matter of hardship to the grantees or lessees who constructed costly building on plots leased out to them, if made to evict. But by subleting the buildings, erected on portland which lies in the main business centre of the Mangalore Town, the grantees earn or derive lucrative rent. In the case under reference, Sri M.Srinivas Nayak earns rent about 364 1/3% more than what he pays to this office in shape of ground rent ~~xxx~~ per annum. With a view to improving the financial position of the Mangalore Landing and Shipping Fund, and ~~xxx~~ to avoid such litigation which would be involved in eviction proceedings, cases of subletting of buildings for any purposes as liked by the grantees, may be permitted, proved the grantees or lessees agree to pay 1% of the capital value, of the buildings erected on the port land, per annum.

As the subsisting grants are not having such conditions, it is not possible to levy such fees or rent. But however, if the above proposals are approved by Government, the subsisting grants may be cancelled and fresh grants issued with suitable conditions incorporated therein in consultation with the Government Solicitor, in cases of all grantees who agree to the proposals.

III

Memo.No. 2378/47-3 dated 31-10-47 from the Port Officer, Mangalore to Sri M.Srinivas Nayak, Merchant, Bundor, Mangalore.

It has come to the notice of this office that you have sublet the building erected on Port land leased to you on the North reclamation area to the South Kanara Agriculturists Co-operative Marketing Society Ltd., Mangalore, on a monthly rental of Rs.212-9-4. Please report within 7 days of the receipt of this Memo, the authority under which, you have sublet the building without the previous approval of the assigning authority of the order of Grant..

IV

Copy submitted to the Presidency Port Officer, Madras with reference to his No.1084-Gl/46-4 dated 14-12-1946.

V

Letter dated 8-11-47 from Sri M.Srinivas Nayak, Mangalore to the Port Officer, Mangalore.

Ref: Your letter No.2378/47-3 dated 31-10-47.

In your above letter you have asked for an explanation as to the authority under which I have sublet the building on port land (adjacent to warg land R.S.No.1446) without the previous approval of the assigning authority of the order of grant.

(2) In this connection I have to invite your attention to the following

(3) That I am the Lease of the Portland by transfer from Mr.U.Rama Rao, who was the previous lessee. In his letter dated 3-8-45 addressed to you ~~xx~~ he stated in para 1 that a special clause was added in the lease deed granted to him dated 7-11-1934 authorising him to sublet the lease-hold along with the main premises on the patta land to which the lease-hold formed a necessary adjunct (vide Clause.5 of the term-lease dated 7-11-1934), and also prayed for permission to transfer the lease-hold to me.

(4) In your office letter No.2144/~~X~~452 dated 11-9-45 permission for the transfer ~~xx~~ of the plot to me was granted.

(5) That when I got possession of the property, I got only a symbolic possession thereof as the properties were in the actual possession of the ~~xxxxxxxx~~ Chalngeni tenents of the previous owners (vide Part 5 of page of the Sale deed which reads.... xxxx'. That such possession as is with th endors i.e. symbolic possession is hereby given to the vendee by the 1st xecutant on behalf of the vendors in respect of all properties which are ereby conveyed and which are now in the possession of their Chalgeni enants"

(6) Since I got transfer of the plot from the previous lessee with the

permission of the Port authorites, I am entitled to the same previleges as the previous lessee had, to sublet the buildings thereon.

(7) If however you are of opinion that a formal previous sanction from the assigning authority is necessary, I hereby beg to apply for same with the request that a special clause permitting subletting, of the building may please be added in the lease deed.

Thanking you,

Letter dated 3-2-48 from Sri M.Srinivas Nayak, Mangalore, to the Port Office Mangalore.

Port Land-North Reclamation-Plot leased-
Your letter No. 2378/47-5 dated 4-12-47.

I regret the reply to above letter was delayed owing to my absence on business tour to Madras and Bombay from where I returned only on the evening of 30th Ultime.

The only tenant other than Messrs S.K.Agriculturists' Co-operative Wholesale Society Ltd., to whom the Plot has been sublet is Mr.Ullal Hari Vaman Nayak, who is a carrying over tenant and the monthly rent received from him is Rs.25/-

Letter No. 1465/48 dated 11th May 1948 from the Port Officer, Mangalore to the Presidency Port Officer, Madras.

Mangalore Port-North Reclamation-Land-Plot measuring 2044 leased to Sri M.Srinivas Nayak-Subletting of-
This office Endt.No. 2378/47-3 dated 31-10-1947.

2. Aplot measuring 2044 Sq.ft. on the North reclamation area was leased to Sri M.Srinivas Nayak, Merchant, Mangalore on a rent of Rs.126/- per annum for 25 years from 7-11-1945. Presidency Port Officer's No. 2746/G1/52-2 dated 4-1-1946. The lessee has sublet the premises to 2 parties viz., The South Kanara Agricultural Co-operative Marketting Society Ltd., and Sri Ullal Hari Vaman Nayak. The former pays a rent of Rs.255/- per annum and the later Rs. 300/- per annum.

3. In reply to this office letter No.2378/47-3 dated 31-10-47, referred to above, the terms contends that he has been the lessee of the Port land by transfer from Sri U.Rama Rao who was previous leasee and that he was entitled to the same previleges as Mr.Rama Rao was enjoying viz., subletting of the buildings in question - Vide a copy of his letter dated 8-11-1947 enclosed.

4. Sri Ullal Rama Rao was the lessee of the Plot before it was transferred in favour of Sri M.Srinivasa Nayak. He rented out the building to Sri Ullal Vasudev Nayak for a firewood depot. This permission was granted in G.O.No.561 Fin(Mar) dated 22-10-34. But the present lessee Sri M.Srinivasa Nayak has sublet the building to a second party viz., the South Kanara Agricultural Co-operative Marketting Society Ltd., with effect from 19-10-46. In this connection a reference is solicited to this office letter to the Presidency Port Officer, Madras No. 2896/40-1 dated 6-1-1944 and the Presidency Port Officer's Endt.thereon No. 2530-G1/40-5 dated 21-1-1947.

5. In the circumstances explained above, the party now requests that a special clause for subletting of the building be added in the lease deed. I consider that the action of the lessee in subletting the building is not in order with reference to conditions 6 and 13 of the orders of the grant and that the rent received by Sri M.Srinivas Naik is in excess of the amount paid to this department. I would therefore suggest that in all such cases, the lessee should be directed to pay to this department 50% of the amount received by them in excess of the rent paid to this department. If this is approved an additional clause as above may be included in the order of Grant with the approval of Government.

6. The above suggestion is for your consideration and orders as this would improve the financial position of the Fund.

Copy of letter No. 1786-G1/48-1 dated 31st May 1948 from the Presidency Port Officer, Madras to thePort Officer, Mangalore.

Ref:-Mangalore Port-North Reclamation land-Plot measuring 2044 sq.ft. leased to Sri M.Srinivasa Nayak-Subletting of-your letter No. 1468/48 dated 11-5-1948.

The action of Sri M.Srinivasa Nayak, Merchant, Mangalore in having sublet the premises without the previous written sanction of the assign authority is a breach of conditions (6) and (13) of the grant now in fo His claim for a concession enjoyed by the previous occupent of the land under the terms of a lease than subsisting is not in order and cannot b recognised. The grantee may therefore, be asked to show cause why the subsisting grant in his favour may not be cancelled under clause 16 th

Meanwhile the District Collector, South Kanara may please be addr ex for his views on the suggestion given in the penultimate para of you letter cited above.

VIII

Letter C.No.B.2.12909/48 dated 7-12-48 from the Collector of South Kanara, Mangalore to the Port Officer, Mangalore.

Grants-Land-Mangalore Port limits-North Reclamation area Plot measu 2044 sq.ft. granted to Sri M.Srinivas Nayak-Subletting of-enhancemen of rent-proposal-further information-called for.

Ref:-Your letter No. 1465/348-3 dated 21-6-48.

According to the instructions contained in G.O.No.Ms. 3148 P.W.D., dated 1-9-42, temporary grants in respect of lands under the Control of the Port Department should be made by the P.P.O. in consultation with th Revenue Department in accordance with the instructions in B.S.O.15-A and 24-A. It is not clear whether this Department was consulted at all befo issuing the grant order in the case in question. I may be consulted before issuing the grant order, the authority under which the grant was ordered by the P.P.O. without consulting the Revenue Department may please be ci

IX

Letter Roc.No.12909/48-B2 dated 27-2-50 from the Collector of South Kana Mangalore to the Secretary to Government, Public Works Department, Madras through the Secretary to the Land Revenue, Board of Revenue, Madras.

Land-South Kanara-Mangalore- Port limits-North Reclamation areas-Plot measuring 2044 sq.ft.-Lease to M.Srinivasa Nayak-Cancellation-Further report- Submitted.

Ref:-This office Ref.C.No.12909/48-B2 dated 23-3-49.
Govt.Public Works Dept. Memo.No.2282 F/49-4 dated 22-10-49.

I have examined the whole matter again. It is true that in G.O.No. 561 Fin(Mar) dated 22-10-34, permission was accorded to the Presidency Port Officer to lease the land in question for a period of 6 years. In the same G.O.permission was also accorded to U.Rama Rao to underlet the leased portion subject to the condition that it should be underlet only with his main premises for which the lease portion is considered a neces adjunct. Under this permission, U.Rama Rao in whose favour the land was leased by the Port Officer had sublet it to Ullal Vasudeva Nayak. But conditions have since changed. Ullala Rama Rao ceased to be the lessee of the plot were long and Manel Srinivasa Nayak is the present lessee of plot by virtue of an order of grant made by the Presidency Port Officer o 12-45. The grant was made by the Presidency Port Officer agreeably to th instructions contained in G.O.No.Ms. 2940-P.W.Dept dated 22-12-36 read with G.O.No.Ms. 1810 P.W.D. dated 4-9-37. According to the instructions contained in the above Government order, the power of granting a lease in the above case rests exclusively with the Presidency Port Officer and consultation with this Department is necessary.

2. The port Officer, Mangalore however, in his letter No.1465/48-3 o 21-6-48, raised the question as to whether in view of the fact that the lessee (M. Srinivasa Nayak) has sublet the land to a second party on a lucractive rent of Rs.2,851/- per annum, 50% of the net differential rent may be demanded from the lessee with a view to improving the financial po of the Mangalore Landing and Shipping Fund. Obviously, it will be irregu and illegal to levy any such payment from the lessee as it is not provide in the conditions of the grant order. On the other hand, the only option left for the Government is to cancel the grant for infringement of the

conditions of the grant. The lessee in this case has violated condition, 3 6 and 13 of the grant order by subletting the building existing on the plot to the South Kanara Agricultural Co-operative Marketting Society Ltd., with effect from 19-10-46. The Presidency, Port Officer may take necessary action in this regard as he is competent to do it.

3. The order of grant dated -12-45 made by the Presidency Port Officer in favour of the present issue is enclosed for perusal and return.

Proceedings No.1795-G1/50-2 dated 14th July 1950 from the Presidency Port Officer, Madras.

Proceedings:-

Sub:-Port-Mangalore-North Reclamation area-order of grant issued in favour of Sri M.Srinivasa Nayak in respect of a plot of 2044 sq.ft.-cancellation-orders-passed-

Ref:-1.From the Port Officer,Mangalore No.1465/48 dated 11-5-48.
2. From the Collector of South Kanara letter No.Roc.12909/48 B.2. dated 27-2-50 to the Secretary to Government,Public-works Department,Madras through the Board of Revenue,Madras
3. From the Secretary to Government,Public Works Department,Madras t the Presidency Port Officer,Madras Memo.No.2282/F/49-9 P.W.dated 16-5-50.
4. From the Presidency Port Officer,Madras to the Secretary toGovernment, Public Works Departent,Madras No. 3542-G1/49-3 dt.3-6-50.
5. From this Secretary to Govt.Public Works Department,Madras to the Presidency Port Officer,Madras Memo.No.2282-F/49-11 & P.W. dated 26-6-50.

X'

Sri M.Srinivasa Nayak, Merchant, Mangalore in whose favour an order of grant dated December 1945 has been issued by the undersigned in respect of a plot of land measuring 20 ff. sq.ft. in the North Reclamation Area within the Port limits of Mangalore on a rent of Rs.126/- per annum for a period of 25 years from 7-11-45 has violated conditions 3,6 and 13 of the grant order by sub-letting the land and structures thereon on a lucrative rent of Rs.285/- per annum and Rs.300/- per annum to two parties, namely, the South Kanara Agricultural Co-operative Marketting Society Ltd., with effect from 19-10-46 and Sri Ullal Hari Vaman Nayak of Mangalore respectively. The grantee, Sri M. Srinivasa Nayak thus loses all his rights under the grant on account of his irregular action in sub-letting the plot. The undersigned accordingly cancels the above said grant wholly under clause 16 thereof. The Port Officer,Mangalore is hereby authorised under clause No.16 of said grant order to assume control of all the land, buildings, fences and structures thereon from the said Sri M.Srinivasa Nayak and the latter shall not be entitled to any compensation there for. The Port Officer, will intimate the fact of his having done so to the undersigned.

-true copy-

XII

Registered Memo.No.1900/50-4 dated 19-7-1950 from the Port Officer, Mangalore, to Sri M.Srinivasa Nayak, Merchant, Ambur Mangalore.

Sub:-Mangalore Port-North reclamation area-order of grant in respect of plot measuring 2044 sq.ft. issued in favour of Sri M.Srinivas Nayak-Cancellation-orders passed- assumption of control over land, buildings fences and structures thereon.

Ref:- Presidency Port Officer's Proceedings No. 1795/G1/50-2 dated 14-7-50.

Order of Grant dated December 1945 issued by the Presidency Port Officer, Madras in your favour in respect of a plot of part land measuring 2044 sq. ft on the north reclamation area within the port limits of Mangalore for a period of 25 years from 7-11-1945 having been wholly cancelled by the Presidency Port Officer, Madras in his proceedings No. 1795/G1/50-2 dated 14-7-50, you are hereby requested to hand over the land, buildings, fences and structures thereon by 22-7-50 Forenoon to this department. To enable assume control over the land, buildings fences and structures thereon you will please remove the moveable merchandise from the land within the period stipulated above as the buildings etc., will be taken over, looked and sealed by me on 22-7-50 f.n.

The copy of the order of grant in your custody may please be returned to this Office for cancellation.

No.

Copy submitted to the Presidency Port Officer, Madras for favour of information with reference to his No. 1795-G1/50-2 dated 14-7-50. A further report will be submitted when actual control over the land, buildings, fence and structures thereon is assumed.

XIII

Memo No. 1795/G1/50-3 dated 7th August 1950 from the Presidency Port Officer, Madras to the Port Officer, Mangalore.

Sub:-Mangalore- North Reclamation area- Order of grant in respect of Plot measuring 2044 sq.ft. issued in favour of Sri M.Srinivasa Nayak- cancellation of-Correspondence resting with your Endt.No.1900-50-7 dated 1-8-1950.

XIV

Please consult the District Collector in the matter with reference to my proceedings No. 1795-G1/50-2 dated 14-7-50 copy endorsed to that Officer furnishing him with a copy of the appeal petition of Sri M.Srinivasa Nayak dated 24-7-50, and also a copy of his subsequent letters to you, dated 20-7-50 and 28-7-50, and report the result to this office.

2. Proceedings against the lessee may in the meanwhile be kept in abeyance.

XV

Copy submitted to the Secretary to Government Public Works Department, Madras in continuation of my proceedings No. 1795-G1/50-2 dated 14-7-50 Copy endorsed to Government with reference to their Memo No. 2282-F/49-11 P.W. dated 26-5-50.

A copy of the correspondence subsequent to my proceedings cited is enclos

XVI

Letter No.1900/50-8 dated 23-8-50 from the Port Officer, Mangalore to the Collector of South Kanara,-Mangalore.

Mangalore Port-North Reclamation area-Order of grant issued in favour of Sri M.Srinivas Nayak in respect of plot measuring 2044 sq.ft-orders of cancellation- Appeal petition remarks-requested.
Ref:-Presidency Port Officer's proceedings No. 1795-G1/50-2 dated 14-7-50 with copy to you.

Order of grant issued by the Presidency Port Officer, Madras in favour of Sri Srinivas Nayak in respect of Port land measuring 2044 sq.ft. on the north reclamation area for a period of 25 years from 7-11-1945 has been wholl cancelled by the Presidency Port Officer, Madras in his proceedings No. 795-G1/50-2 dated 14-7-50, copy endorsed to you, for violation of conditions stipulated in the grant order. Accordingly to enable assume, control over the land, buildings, fences and structures thereon, the grantee was directed to remove the moveable merchandise from the land whereupon he has filed appe petitions dated 20-7-1950, 24-7-1950 copies of which are enclosed herewith long with the connected order ~~xxxx~~ of grant already cancelled by the Presidency Port Officer, I request you to please offer your remarks on the above. The cancelled order of grant may please be returned with the reply.

XVII

Letter D.Dis.No.21975/50 dated 30-10-1950 from the Collector of South Kanara to the Port Officer,-Mangalore.

Sub:-Grant-Land-Mangalore Port Limits- North reclamation area-Plot granted to Sri M.Srinivasa Nayak-Violation of conditions- Cancellation of Grant- Taking possession of -remarks.
Ref:-Your No. 1900/50-8 dated 23-8-1950.

In G.O.No.357 Revenue dated 14-2-1951, the Government accepted the view that the provisions of the Land Encroachment Act should be employed in cases of the kind reported by you. You may therefore inform the Presidency Port Officer, accordingly. If it is found necessary in this case, to have recours to the provisions of the Land Encroachment Act, please address the Tahsildar of Mangalore with copies of the reference to the Revenue Divisional Officer, Mangalore and this office. The cancelled order of grant is enclosed.

Copy of Memo.No. 1795-G1/50-10 dated 30th November 1950 from the Presidency Port Officer, Madras to the Port Officer, Mangalore.

Sub:-Land within port limits- North reclamation area-Plot granted to Sri M.Srinivasa Nayak-Violation of conditions cancellation of grant-Taking possession of-
Ref:-Your Endorsement No. 1900/50-15 dated 17-11-50.

The answer is in the affirmative. This office Proceedings dated 14-7-50 against Sri M.Srinivasa Nayak should be enforced.

2. The Tahsildar, Mangalore may also be furnished with a copy of the correspondence in which he has contended that the Port authorities have to take action in a competent court of law for enforcement of the conditions of the lease and not forcibly enter take over or lock and seal the premises-Vide Sri M.Srinivasa Nayak's letter to you, dated 28-7-50, and requested to levy assessment or penal assessment or charge as may be deemed fit by the Revenue Department for the unauthorised occupation as contemplated in the Land Encroachment Act, 1905.

Extracts (Sections 3 to 5 and 6) from the Land Encroachment Act 1905 and a copy of the Madras Land Encroachment (Amendment) Act, 1950 are herewith enclosed.

No. 175-G1/50-12 copy (together with a copy of Port Officer's endt.dated 17-11-50 cited) forwarded to all other Port Officers for information.

Letter No.1900/50-16 dated 30th January 1950 from the Port Officer, Mangalore to the Tahsildar, Mangalore.

Sub:-Grant-Land-Mangalore Port limits- North Reclamation area-Plot granted to Sri M.Srinivasa Nayak-Taking possession of-requested.
Ref:-D.Dis.No.21975/50 dated 30-10-50 from the Collector of South Kanara to the Port Officer, Mangalore with copy to you.

Sri M.Srinivasa Nayak, Merchant, Mangalore was granted an order of grant for a plot measuring 2044 sq.ft. on the North reclamation area, Mangalore, and as the party violated certain conditions of the said, grant, the Presidency Port Officer, Madras cancelled the grant in this proceedings No. 1795-G1/50-2 dated 14-7-50(copy enclosed) and further ordered to take control of the land and the structures thereon. As the party does not intend to hand over possession of the land and structures thereon peacefully, (vide copy of his letter dated 28-7-50 enclosed) the Collector of South Kanara was addressed in the matter and in his reference cited above he has directed that the provisions of the land encroachment Act should be employed in cases of th kind referred to. As it is found necessary in this case to have recourse to the provisions of the land encroachment Act I request you to please take necessary action to evict the encroacher from the said land levy assessment or payable assessment or charges as may be deemed fit for the unauthorised occupation as contemplated in the Land Acquisition Act 1905 and hand over possession of the land and structure thereon to this office at an early date.

The cancelled order of grant with plan is enclosed herewith.

Encl: Copy of letter dated 28-7-50 from Sri M.Srinivas Nayak.
Copy of grant with plan and copy of-P.P.O's No. 1795-G1/50-2 dt.14-7-50.

Copy to the Collector of South Kanara for information with reference to his D.Dis.No.21975-50 dated 30-10-1950.

Copy to the Revenue Divisional Officer, Mangalore.
Copy submitted to the Presidency Port Officer, Madras with reference to correspondence resting with his memo.No. 1795-G1/50-10 dated 3-12-50.

Memo No. 1465/48-2 dated 21-6-48 from the Port Officer, Mangalore to Sri M.Srinivas Nayak, Merchant, Mangalore.

Mangalore Port-North Reclamation land-Plot measuring 204 sq.ft. leased
Your letter dated 8-11-1947.

Sri M.Srinivas Nayak Merchant, Mangalore is informed that his action in having sublet the premises without the previous written sanction of the assigning authority is a breach of conditions (6) and (13) of the grant now in force. His claim for a concession enjoyed by the previous occupant of the land under the terms of a lease than subsisting; is not in order and cannot be recognised. Please therefore, show cause why the subsisting grant in his favour may not be cancelled under clause 16 thereof. He will please forward his reply to this office within five days of the receipt of this memo.

Copy submitted to the Presidency Port Officer, Madras with reference to his No. 1786/G1/48-1 dated 31-5-48.

-true copy-

For Secretary.

yrm. 11/7/

Ref. R. C000/53. S.Kanara Collector's Office
Mangalore dated 17.6.53.

From

A.Kabalimurthy Chettiar, B.A.,
Collector of South Kanara,
Mangalore.

B.6598

To The Secretary to Government,
Public Works Department,
Fort St.George, Madras.

Through The Secretary,
Board of Revenue (Land Revenue)
Madras (In duplicate)

Sir,

PO.TS: Mangalore - North Reclamation area - Cancellation of grant of lease of port land T.S. 642/C to Sri M.Srinivasa Nayak Eviction under Land Encroachment Act.-Report-submitted

Ref:1.Govt. Memo.No. 29642/53.P dated 14.3.1953.
2.Board's Ref.S. 1960/53.1 dated 2.6.1953.

The petition dated 7.3.53 from Sri M.Srinivasa Nayak, Mangalore to the Minister for Public Works, Madras appears to be an appeal against the orders passed by the Board of Revenue in its R.P.Ft 302 dated 10.1.53 for violating the condition 3,6 and 13 of the grant order in respect of S.No. 642/1 of Mangalore Thota village. This plot happens to be a portion of North Reclamation area of Mangalore Port Limits which is under the control of the Port authorities. It was leased to one Sri U.Rama Rao a legal practitioner by the Presidency Port officer agreeably to the sanction accorded by the Government in their G.O.No. 561 Finance, (Marine)Department dated 22.10.1934. The lease was for a period of six years. This plot together with the patta land T.S.No 437 came to be transferred to Sri M.Srinivasa Nayak(the present petitioner)by the Original lessee Sri U. Rama Rao. Subsequently, the Presidency Port officer issued a grant order in favour of Sri M.Srinivasa Nayak for the same plot covering 2044 sq.ft. for a period of 25 years from 7.11.1945. According to this grant order the lessee was prohibited from sub letting the plot without the previous written sanction of the Presidency Port officer, as per condition 13 of the grant order. The Port officer, Mangalore in his letter No. 1465/48.3 dated 21.6.48 brought to the notice of the Collector the fact of sub letting the premises in favour of two parties viz:the S.K.A.C.".Society and Sri Ullal Pari Vaman Nayak and requested for Collector's opinion whether the lessees could not be directed to pay to the Port department 50% of the amount received by them by way of rent. The matter was enquired into in detail. Of the two parties referred to above, Sri Ullal Pari Vaman Nayak had the premises sub let in his favour by the previous lessee Sri U. Rama Rao agreeably to the permission accorded in G.O.No 561, Fin (Marine)Department dated 22.10.1934 to sub let the premises. A report was submitted to the Secretary to Government, Finance (Marine)Department Madras in this office Ref.C.No 12. 12909/48 dated 23-3-1949 detailing the facts of the case. It was pointed out to the Government that the (Port authorities did not consult the Collector before sanctioning the grant agreeably to the instructions contained in G.O.No 3148 (P. . dated 1.9.42 and the cancellation of the grant made by the Presidency Port officer was recommended in view of the irregular procedure adopted by the Port authorities in not consulting the Collector and also for other reasons detailed in the same report.

2/- As recommended by the Collector, the Government directed the Presidency Port officer to cancel the order of grant in their Memo No. 9282.P. 49/11 dated 20-6-1950 and accordingly the Presidency

Port Officer cancelled the grant ~~of the~~ proceedings No. 1705/[illegible]-59-C dated 24.7.59. But while ordering the cancellation the Presidency Port officer mentioned that the grant was cancelled on account of the violation of conditions 8,9 and 13 of the grant order by sub-letting the land and Structure thereon on a lucrative rent to ~~the~~ two parties viz the S.T.A.C.M. society and Sri Bilal Hari Vaman Karnad of Mangalore. He also authorised the Port Officer, Mangalore under clause 13 of the grant order to assume control of all the land, Buildings and structures thereon. Thereup on the Port Officer Mangalore consulted the Collector as to the procedure for assuming control of the plot. In this office letter D.Dis.2107F-59 dated 30.10.1959 the Port Officer was informed that the land could be taken possession of under the provisions of the Land Encroachment Act and accordingly summary proceedings were instituted against Sri M. Srinivasa Nayak and notice under section 6 was served on him. Against this notice, Sri M.Srinivasa Nayak appealed to the Collector and his appeal was disposed in this office proceedings D.Dis.5422/59A dated 12.7.60. Thereupon Sri M. Srinivasa Nayak filed an appeal against this order before the Board of Revenue. The Board after perusing the connected records found no reason to interfere with the Collector's order and therefore rejected the appeal in R.P. No.302 dated 10.2.62. Now the petitioner has come up with a petition addressed to the Government which virtually is an appeal against the orders of the Board of Revenue.

As the order of grant was cancelled agreeably to the instructions contained in Government Memo 2082-7/49-11 dated 26.6.1950 on the recommendation of the Collector and as no fresh facts have been put forth in the petition I have no remarks to offer.

The connected records of this office D.Dis.12909/59 dated 5.5.60, D.Dis.17911/59 dated 6.7.60, D.Dis.19427-59 dated 21.7.6 D.Dis.2107F/59 dated 30.10.59, D.Dis.5422/59 dated 12.7.60, D.Dis.2017-62 dated 14.10.62, D.Dis.22501/62 dated 20.1.63 and R.C.2[illegible]/60 are enclosed.

Yours faithfully,

For Collector.

POST COPY OF TELEPHONIC MESSAGE.

39

From the State Port Officer, Madras.
To the Secretary to Government, Public Works Department, Madras.
No. 958 GL/55-11, dated 15-1-1954.

Sub: Ports - Mangalore - North Reclamation area - cancellation of grant of lease of port land, T.S.642/C to Sri M. Srinivasa Nayak - Evictio under land Encroachment Act - Stay orders -

Ref: Correspondence resting with Government endorsement No. 14047 F/53-8, P.W., dated 7-12-53.

Request Orders.

STATE PORT OFFICER.

13050

Revenue Department.
Subject.

Ports - Mangalore - North Reclamation area - cancellation of grant of lease of port land T.S.642/C to Sri M. Srinivasa Nayak - Eviction under Land Encroachment Act - Stay orders issued.

SECRETARY TO GOVT. 18 FEB 1954

***

Station: Madras. B.P.Mis.189 Dated 15.2.54.

From

Sri W.R.S. Sattianathan I.C.S., Commissioner of Land Revenue.

--

Sri P. Sivasankaran Pillai I.A.S., Secretary, Board of Revenue, Madras.

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Read:- G.O.Ms.No.264 P.W.D. dated 25.1.54. — PPG1-426/(R)

Resolution:-

2. The receipt of records sent with the G.O. cited is acknowledged.

For Secretary.

To the Collector of South Kanara, para 1 only.
with the records as per list by R.P.
To the Secretary to Government, Public Works Department, Madras.para 2 onl

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ADN.15.2.

PWD(Fi) 264 PWG 25.1.54. (R)

Filed with G.O.Ms.No.

19.2.54

(6) P.W.D.(F1)

Ports - Mangalore - North Reclamation area - Plot granted to Sri M.Srinivasa Nayak on an order of grant - Cancellation and proceeding under Land Encroachment Act - Appeal petition - Rejected.

From Sri M.Srinivasa Nayak, petition d/ 7-3-53
To the S.P.O.and the Collector of South Kanara
Memo No. 14047 E/53-2 P.W. dated 14-3-53.

From the Board of Revenue Ref.No.B.4979/53-4 dated 11-7-53

ORDER MS NO. 264 P.W. DATED 25·1·54

In December 1945, the State Port Office issued an order of grant in favour of Sri M. Srinivasa Nayak, Merchant, Mangalore, in respect of a plot of land, 2044 sq. ft. in the North Reclamation Area at the Port of Mangalore on a rent of Rs.126/- per annum for a period of 25 years. Subsequently in his proceedings No.1795 50-2-dated 14-7-1950, the State Port Officer cancelled the order of grant issued in favour of the lessee for having violated conditions 3, 6 and 13 of the grant order, and proceedings were taken against the lessee under the provisions of the Land Encroachment Act, to enforce the cancellation order. The petitions of the lessee to the Collector of South Kanara and to the Board of Revenue against the order of eviction were rejected. Now in an petition to Government the lessee has requested that the proceedings of the State Port Officer cancelling the order of grant issued in his favour might be set aside, and the petitioner permitted to continue as lessee till the expiry of the lease period on 7-11-1970, or that in the alternative, orders might be caused to be issued releasing of the said plot to him; and that pending final orders on the petition, further proceeding in E.C.86/50 on the file of the Revenue Division Officer, Mangalore, seeking to oust the petitioner

from T.S.No. 642/C of Kasba Bazar village, Mangalore Town, may be ordered to be stayed. The Government after issuing necessary stay orders have examined the matter in detail and they see no reason to interfer with the orders of the State Port Officer, cancelling the order of grant. They accordingly direct that the petition of Sri M.Srinivasa Nayak be rejected and stay of eviction proceedings under the Madras

To
The S.P.C.
The Collector of South Kanara
The Board of Revenue
with encls.
Sri M.Srinivasa Nayak,
son of Sri M.Annappa Nayak
Pentlandpeta,
Mangalore.

2282/53-F

PWD (F).

SUB: Ports - Mangalore - North Reclamation area - Plot granted to Sri M.Srinivasan Nayak on an order of Grant - Cancellation and proceeding under Land Encroachment Act.

REF: From the S.P.O. No.1755/G1/52-6 d/9-2-53
From Sri M, Srinivasan Nayak, petition dated 7-3-53 to M.(P.W.).

"S.P.W.
Issue an order of stay and please call for a report.
N.R.R./7-3-53".

The case relates to the reconsideration of the orders of cancellation of the order of grant in favour of Sri M. Srinivasa Nayak in respect of a plot of land (2044 sq.ft.) in the North Reclamation area at the port of Mangalore and stay of proceedings for eviction under the Land Encroachment Act.

2. In December 1945 the S.P.O. issued an order of grant in favour of Sri M.Srinivasa Nayak, Merchant, Mangalore in respect of the above plot of land on a rent of Rs.126 per annum for a period of 25 years. The lessee Sri Srinivasa Nayak violated the conditions and the order of grant by subletting the land and structure thereon on a lucrative rent of Rs.285/- p.a. and Rs.300/- p.a. to two parties, namely, the South Kanara Agricultural Co-operative Marketing Society Ltd. with effect from 19-10-46 and Sri Ullal Hari Vaman Nayak. The matter was brought to the notice of the Collector who in turn brought it to the notice of the Govt. On the suggestion of the Rev.Dept. a copy of the order of grant issued in favour of the lessee was obtained. In forwarding the copy of the order of grant, the Collector stated that the lessee had violated condition 3, 6 and 13 of the grant order by subletting the building on the plot and suggested that the P.P.O. (now S.P.O.) might take necessary action to cancel the grant as he was competent to do it. In Govt. Memo No. 2282 F/49-11 dated 26-6-50 the Govt. returned the copy of the order of grant to the S.P.O. for necessary

action to cancel the grant. In his proceedings No.1795/G1/50-2 dated 14-7-50, the P.P.O. cancelled the order of grant issued in favour of the lessee for having violated conditions 3, 6 and 13 of the grant orde In view of the objections raised by Sri M.Srinivasa Nayak against the cancellation, the ~~R~~P.P.O. directe the P.O., Mangalore to consult the Collector of S.Kanara in regard to the further proceedings to be taken against the lessee. The Collector of S.Kanara informed the Port Officer, Mangalore that in 1931, the Govt. had accepted the view that the provisions of the Land Encroachment Act should be employed in cases of this kind and that ~~if~~ found necessary, the Tahsildar, Mangalore should be addressed to have recourse to the provisions of the Land Encroachment Act. Proceedings were accordingly taken against the lessee under the Act, to enforce the cancellation order.

3. It will be seen from pp.1-3 c.f. that the ~~lessee~~ Collector and the Board of Rev. have rejected the petitic of the lessee against the order of eviction.

4. The petition at pp.5-17 c.f. is an appeal agai the order of the P.P.O. cancelling the grant order. For the reasons explained in the petition, he has reques that he may be permitted to continue as lessee till the expiry of the lease period (till 7-11-1970) or in the alternative orders may be issued releasing the said plot to him and that pending final orders on the petition further proceedings under the Land Encroachment Act may be stayed.

5 According to the U.O. No.2633/50-2 Pub.(Ser-C) dated 21-8-1950, stay orders should not be issued without calling for a report of the Officer against

whose orders the stay was sought by the parties and that, the grant of stay order was considered really necessary, the case should be circulated to H.C.M. for orders. Subsequently in U.O. No.4416/52-13 Pub. (Ser-C) dated 13-10-1952 instructions have been issued that cases in which it is proposed to issue stay orde need not be circulated to the C.M. and that they may stop with the Minister or Ministers concerned. No men tion has been made in later instructions about obtaini a report from the authority against whose orders stay is sought.

6. In view of the facts explained in paras 1 to 3 at pr.1-2 ante, it is for consideration whethe it will be considered necessary to issue stay orders in this case and to obtain the remarks of the Collecto of South Kanara and the S.P.O.

7 Revenue may see prior to circulation to M(PW)

11.3.53

11.3.53

11353 11.3.53

Rev

Rev. Dept.

To A.5.

The P.W. Dept's note from pl ante may be perused.

2 It is submitted that the lease granted to the petitioners has been cancelled by the State Post Officer. Under section 15-A of the Madras Land Encroachment Act 1905, the occupation by the petitioner is to be treated as an unauthorised one and dea with under the provisions of the Act. In view of the minutes of M(P.W.) onp 5 ef, this dept. may agree to the grant of stay of eviction proceedings in this case. However P.W.D. may be requested to circulate the

been taken under the Madras Land Encroachment Act 1905, a subject dealt with in this department. With reference to 'L' on p 3 ante it is submitted that in this Dept in cases in which stay is granted simultaneously a report also is ~~forwarded~~ called for from the subordinate officers. With these remarks the file may be returned to P.W.D.

12/3/53 13/3/53 13/3

11.3.53.

12.3.53

P.W.D. (F).

The file relates to the reconsideration of the orders of cancellation of the Grant order issued in favour of Sri M. Srinivasa Nayak in respect of a plot of land (2044 sq. ft.) in the North Reclamation area at the port of Mangalore and stay of eviction proceedings under the Land Encroachment Act. The case is explained in detail in this Deptt. note at pp.1-3 ante.

2. Revenue Deptt. have agreed to the grant of stay of eviction proceedings in this case and have requested that the file may be circulated to M.(L.R) also, as action in this case has been taken under the Madras Land Encroachment Act, 1905.

3. A draft Memo. is submitted. The file may be circulated to M.(L.R) through M.(P.W).

5 PWD / PWD

Rev. No 21998 A/53 13.3.53

24385(A)

Issued as memo No.22642 F/53 dated 14-?-53.
From the Board of Revenue No.B.4979/53-4 dated 11-7-53.

-:-

The case relates to the reconsideration of the orders of cancellation of the order of grant in favour of Sri M. Srinivasa Nayak in respect of a plot of land (2044 sq. ft.) in the North Reclamation area at the port of Mangalore and stay of proceeding for eviction under the Land Encroachment Act.

2. In December 1945 the S.P.O. issued an order of grant in favour of Sri M. Srinivasa Nayak, Merchant, Mangalore in respect of the above plot of land on a rent of Rs.126 per annum for a period of 25 years. The lessee Sri Srinivasa Nayak violated the conditions of the order of grant by subletting the land and structures thereon on a lucrative rent of Rs.285/- p.a. and Rs.300/- p.a. to two parties, namely, the South Kanara Agricultural Cooperative Marketing Society Ltd., with effect from 19-10-46 and Sri Ullal Hari Vaman Nayak. The matter was brought to the notice of the Collector who in turn brought it to the notice of the Government. On the suggestion of the Rev. Dept. a copy of the order of grant issued in favour of the lessee was obtained. In forwarding the copy of the order of grant, the Collector stated that the lessee had violated conditions 3, 6 and 13 of the grant order by subletting the building on the plot and suggested that the P.P.O. (now S.P.O.) might take necessary action to cancel the grant as he was competent to do it. In Govt. memo No.2282 F/49-11 dated 26-6-50 the Govt. returned the copy of the order of grant to the S.P.O. for necessary action to cancel the grant. In his proceedings No.1795/G1/50-2 dated 14-7-50, the S.P.O cancelled the order of grant issued in favour of the lessee for having violated conditions 3, 6 and 13 of

p.t.o.

the grant order. In view of the objections raised by Sri M. Srinivasa Nayak against the cancellation, the S.P.O. directed the P.O., Mangalore to consult the Collector of S.Kanara in regard to the further proceedings to be taken against the lessee. The Collector of S.Kanara informed the Port Officer, Mangalore that in 1931, the Government had accepted the view that the provisions of the Land Encroachment Act should be employed in cases of this kind and that if found necessary, the Tahsildar, Mangalore should be addressed to have recourse to the provisions of the Land Encroachment Act. Proceedings were accordingly taken against the lessee under the Act, to enforce the cancellation order.

3. The Collector and the Board of Revenue have rejected the petition of the lessee against the order of eviction.

4. The petition at pp.5-17 c.f. is an appeal against the order of the S.P.O. cancelling the grant order. For the reasons explained in the petition, he has requested that he may either be permitted to continue as lessee till the expiry of the lease period (till 7-11-1970) or in the alternative orders may be issued releasing the said plot to him and that pending final orders on the petition further proceedings under the Land Encroachment Act may be stayed.

5. The matter was examined here and orders were issued for a stay of eviction proceedings. The petition at pp. 5-17 c.f. was again referred to the Collector of South Kanara and the S.P.O. and they were asked to submit their report through the Board of Revenue. The S.P.O's report is at p.27 c.f. (Hindi) and the Collector's report at pp. 37-38 c.f.

6. It will be seen from the S.P.O's report on p.27 c.f. that such sub-letting contrary to the provisions of the grant is a loss of revenue to the port and profit to the grantee at the cost of the Port Revenue. The S.P.O. has stated that there are several similar cases and that unless suitable action is taken

in time, such cases of sub-letting would increase and get out of control.

7. The Collector has stated that the present petition to the Govt. is virtually an appeal against the orders of the Board of Revenue in B.P.Rt.No. 302 dated 10-1-53. He has further stated that as the order of grant was cancelled agreeable to the instructions in memo No.2282 F/49-11 dated 26-6-50 on the recommendation of the Collector and as no fresh facts have been put forth in the present petition, he has no remarks to offer in the matter.

8. It is stated that the orders in B.P.Rt.No. 302 dated 10-1-53 have been passed after close examination of the several aspects of the grant of land to the petitioner by the port authorities.

9. The Board of Revenue has submitted the records in B.P.Rt.No.302 dated 10-1-53 and has no further remarks to offer in the matter.

10. In the circumstances reported by the S.P.O. and the Collector and in view of the fact that the Board of Revenue has already rejected the appeal in B.P.Rt.No.302 dated 10-1-53, it is for orders whether the petition may be rejected and the stay granted may be vacated.

11. Subject to orders, Revenue may see prior to circulation. Legal Deptt. may also see.

27/8/53

The note does not deal with the grounds urged in the present petition. Apart from the question of interpretation of clauses 3, b and 13 of the order of grant, the following points raised in the petition require to be

that what the petitioner has leased out to the South Kanara Agricultural Co-operative Marketing Society. LTD is the land belonging to him in T.S. no. 437 and not the land granted to him on lease in 642/c by the Port dept.

that Sri U. Hari Vaman Nayak was a tenant under the previous lessee Sri U. Rama Rao and is holding over even after the lease of the land to the petitioner by the Port dept.

i that no notice of the proposed cancellation of the lease was given to the petitioner

Examine the above points with ref. to the records and also find up the G.O in which the previous lessee Sri U. Rama Rao was permitted to sublet the land to Sri U. Hari Vaman Nayak.

Please see the notes from p. 5 ante and the orders of the D.S. on pp.7-8 ante. The various points referred to therein are examined below:-

Item (i) on p.8 ante.

The contention of the petitioner is that what has been leased out to the South Kanara Agricultural Cooperative Marketing Society is the land belonging to him in T.S. No.437 and not the land in question granted to him by the Port Deptt. This point was already mentioned by the Petitioner in his appeal petition dated 19-2-1952 to the Colletor of South Kanara and also in the revision petition t the Board of Revenue.

The Statement of the Secretary of the South Kanara Agricultural Cooperative Marketing Society recorded by the Revenue Inspector shows tha except a room in the north western portion which is in the occupation of Sri Hari +Vaxman Nayak the rest of the entire building existing in T.S.No.437 and 642/B (the land in question - previous No.642/C- vide sketck at p.23 of (J)) is under the occupation of the Society on a monthly rental of Rs.300/- for the last six years. The premises let out to the Society is marked 'I' in the sketch and that occupied by Sri Hari Varman Nayak is marked '2' in the sketch at p.19 of (A). It will be seen that the petitioner has leased out a part of the land in question to the Society and therefore the contention of the petitioner is not correct.

Item (ii) on p.8 ante.

In G.O.No.561, Fin. (Marine) dt.22-10-34 permission was accorded to the S.P.O. to lease the land in question to Sri Ullal Rama Rao, for a perio of six years. In the same G.O. permission was also accorded to Sri Rama Rao to sublet the leased

P.T.O.

portion subject to the condition that it should be sublet only along with his main premises for which the lease portion was considered a necessary adjunct. Under the permission, Sri Rama Rao had sublet it to Sri Ullal Vasudeva Nayak. Conditions had since changed. Sri Rama Rao ceased to be the lessee of the plot ere long and Sri M. Srinivasa Nayak is the present lessee of the plot by virtue of an order of grant issued by the S.P.O. in 1945.

When the question of subletting to the South Kanara Agricultural Marketing Society and Sri Hari Varman Nayak was brought to the notice of the Collector, he made detailed enquiries. He ~~has~~ reported that Sri Hari Varman Nayak had the premises sublet in his favour by the previous lessee Sri Ullal Rama Rao agreeably to the permission accorded in G.O.No.561 Fin.(Mar.) dt.22-10-34, ~~But the Collector reported~~ and that the lessee had violated conditions 3, 6, and 13 of the Grant order of the S.P.O. by subletting the building existing on the plot to the S.K. Agricultural Marketing Society with effect from 19-10-46 and that the S.P.O. might take necessary action to cancel the grant order in consultation with the Govt. The Board of Revenue agreed to this. Accordingly the Govt. directed the S.P.O. to take necessary action to cancel the grant. But while ordering the Cancellation the SPO mentioned that the party had sublet to the Society and Sri Varman Nayak. Presumably objection is taken for the mentioning of Nayak Item (iii) above.

It is reported that according to condition 16 of the grant order it is not obligatory on the part of the assigning authority (S.P.O. in this case) to issue any notice of the intended proceedings of revoking the grant or er. However, in his reference No.1465/48 - A 21-6-48 on p.43 of (J) dt.21-6-48 the Port Officer, Mangalore issued a notice asking the petitioner to show cause against the cancellation of the lease. Please see also the letter dated 31-10-44 at page 29 CF)

~~and~~ The petitioner sent his reply after several reminders on 26-6-50 - vide pp.41-43 of (J). Hen the petitioner's contention that no notice was issued and the grant was cancelled behind his back is false.

The file may be sent to Revenue. Legal may also see. Rev may see first.

KG 29.9.53 29.9.53

F 1.10.53

Rev

Rev Dept

PWD WW No. 14047 F/53-6

3-10-53

To u/s

this dept previously saw the case at pp 3-4 ante.

2. Subsequent notes from p 5 ante may be read.

3. This dept may agree with P.W.D. that the petition may be rejected and the stay granted, vacated.

4. The file may be passed on to legal

WW-0.82528 F/53-7

4-11-53

2/11/53 2/11/53

Legal

4/11/53

Law Department

This Dept. also agree with PWD that the petition may be rejected.

17563 F/53-1

3-12-53

KLeK 3/12/53

D.J.

D. & I

The case relates to the reconsideration of the orders of cancellation of the order of grant in favour of Sri M.Srinivasa Nayak in respect of a plot of land (2044 sq.ft.) in the North Reclamation area at the port of Mangalore and stay of proceedings for eviction under the Land Encroachment Act.

2. In December 1945 the S.P.O. issue an order of grant in favour of Sri M.Srinivasa Naya Merchant, Mangalore, in respect of the above plot of land on a rent of Rs.126 per annum for a period of 25 years. The lessee, Sri Srinivasa Nayak, violated the conditions of the order of grant by subletting the land and structures thereon, on a lucrative rent of Rs. 285/- p.a. and Rs. 300/- p.a. to two parties namely, the South Kanara Agricultural Cooperative Marketing Society Ltd., ~~with effect from 19-10-46~~ and Sri Ullal Hari Vaman Nayak. The matter was brought to the notice of the Government. On the suggestion of the Revenue Department, a copy of the order of grant issued in favour of the lessee was obtained. In forwarding the copy of the order of grant, the Collector stated that the lessee had violated conditions 3, 6 and 13 of the grant order by subletting the building on the plot and suggested that the P.P.O. (now S.P.O) might take necessary action to cancel the grant, as he was competent to do it. In Government memo No. 2282 F/49-11 dated 26-6-50 the Government returned the copy of the order of grant to the S.P.O. for necessary action to cancel the grant. In his proceedings No.1795, G1/50-2 dated 14-7-1950, the S.P.O. cancelled the order of grant issued in favour of the lessee for having violated conditions 3, 6 and 13 of the grant order. In view of the objections raised by Sri M. Srinivasa Nayak against the cancellation, the S.P.O.

directed the P.O., Mangalore, to consult the Collector of South Kanara in regard to the further proceedings to be taken against the lessee. The Collector of South Kanara informed the Port Officer, Mangalore, that in 1931, the Government had accepted the view that the provisions of the Land Encroachment Act should be employed in cases of this kind and that if found necessary, the Tahsildar, Mangalore, should be addressed to have recourse to the provisions of the Land Encroachment Act. Proceedings were accordingly taken against the lessee under the Act, to enforce the cancellation order.

3. The Collector and the Board of Revenue have rejected the petition, of the lessee against the order of eviction.

4. The petition at pp. 5-17 c.f. is an appeal against the order of the S.P.O. cancelling the grant order. For the reasons explained in the petition, he has requested that he may either be permitted to continue as lessee till the expiry of the lease period (till 7-11-1970) or in the alternative orders may be issued releasing the said plot to him and that pending final orders on the petition, further proceedings under the Land Encroachment Act may be stayed.

5. The matter was examined here and orders were issued for a stay of eviction proceedings. The petition at pp. 5-17 c.f. was again referred to the Collector of South Kanara and the S.P.O. and they were asked to submit their report through the Board of Revenue. The S.P.O's report is at p. 27 c.f. (item 1) and the Collector's report at pp. 37-38 c.f.

6. It will be seen from the S.P.O.'s report on p. 27 c.f. that such sub-letting contrary to the provisions of the grant is a loss of revenue to the port and profit to the grantee at the cost of the

Port. ~~Revenue~~. The S.P.O. has stated that there a several similar cases and that unless suitable action is taken in time, such cases of sub-lettin would increase and get out of control.

7. The Collector has stated that the pre sent petition to the Government is virtually an appeal against the orders of the Board of Revenue in B.P. Rt.No. 302 dated 10-1-1953. He has furth stated that as the order of grant was cancelled agreable to the instructions in Memo No. 2232 F/ 49-11 dated 26-6-1950 on the recommendation of th Collector and as no fresh facts have been put for in the present petition, he has no remarks to offer in the matter.

8. It is stated that the orders in B.P. Rt.No. 302 (W) dated 10-1-53 have been passed after close examination of the several aspects of the grant of land to the petitioner by the port autho rities..

9. The Board of Revenue has submitted the records in B.P.Rt.No. 302 dated 10-1-1953 and has no further remarks to offer in the matter.

10. The main grounds used by the petitic in the present appeal petition are the following:

(1) That the petitioner has leased out to the land which he the South Kanara Agriculturists Cooperative Marketting Society Ltd., is the land belonging to him in T.S.No. 437 and not the land granted to him in 642/C of the Port Department.

This point was already mentioned by th petitioner in his appeal petition dated 19-2-52 to the Collector of South Kanara and also in the revision petition to the Board of Revenue. The

tatement of the Secretary of the South Kanara Agri-
ultural Cooperative Marketing Society recorded by
he Revnue Inspector shows that except a room in the
orth Western porition which is in the occupation of
ri Hari Vaman Nayak, the rest of the entire building
xisting in T.S.No.437 and 642/B (the land in question -
revious No. 642/C-vide sketch at p.23 of (J)), is
nder the occupation of the Society on a monthly rental of Rs 300/= for
et out to the Society is marked 'I' in the sketch
nd that occupied by Sri Hari Vaman Nayak is marked '2'
n the sketch at p.19 ~~of~~ of (A). It will be seen
hat the petitioner has leased out a part of the land
n question to the Society and therefore the contention
f the petitioner is not correct.

(2) <u>that Sri V.Hari Vaman Nayak was a tenant
nder the previous lessee Sri U.Rama Rao and is holding
ver, even after the lease of the land to the petitioner
by the Port Department</u>.

In G.C.No. 561, Finance (Marine) Dated
2-10-34, permission was accorded to the S.P.C. to
ease the land in question to Sru Ullal ~~Rxxxx~~ Rama Rao
or a period of six years. In the same G.O. permission
as also accorded to Sri Rama Rao to sublet the leased
ortion subject to the condition that it should be
ublet only along with his main premises for which the
ease portion was considered a necessary adjunct. Unde
he permission, Sri ~~Rao~~ Rama Rao had sublet it to Sri Ullal
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ama Rao ceased to be the lessee of the plot ere long
nd Sri K.Srinivasa Nayak is the present lessee of the
lot by virture of an order of grant issued by the
.P.C. in 1945.

When the question of subletting to the
outh Kanara Agricultural Marketing Society and Sri
ari Vaman Nayak was brought to the notice of the Colle

tor, he made detailed enquiries. He reported th Sri Hari Vaman Nayak had the premises sublet in his favour by the previous lessee Sri Ullal Rama Rao agreeably to the permission accorded in G.O. No.561 Fin.(Mar) dated 22-10-34, ~~that~~ the Collector also repo the lessee had violated conditions, 3, 6, and 13 of the gra order of the S.P.C. by subletting the building existing on the plot to the S.K.Agricultural Mar keting Society with effect from 19-10-46 and th the S.P.O. might take necessary action to cancel the grant order in consultation with the Governm The Board of Revenue agreed to this. Accordingl The Government directed the S.P.O. to take nece sary action to cancel the grant. But while ord ing the cancellation, the S.P.O. mentioned that party had sublet to the Society and Sri Vaman N Presumably objection is taken for mentioning Sr Nayak's name. But it was considered that no serious view need be taken of this objection as petitioner has sublet the land granted to him, if not to Sri Vaman Nayak, atleast to the Marke ting Society.

(iii) <u>that no notice of the proposed can cellation of the lease was given to the petitio</u>

It is reported that according to condi-tions 16 of the grant order it is not obligator on the part of the assigning authority(S.P.O. i this case) to issue any notice of the intended proceedings of revoking the grant order. Howev in his reference, No.1465/48-2 dated 21-6-48, on p.43 of (J), ~~dated 21-6-48~~ the Port Officer, Mangalore issued a notice asking the petitioner to show cause against the cancellation of the lease. (Please see also the letter d/30-10-47 at 'S' on p. 29 c.f.). The petitioner sent his reply after several reminders on 26-6-1950 - vi

II on pp. 41-43 of (J). Hence the petitioner's contentic that no notice was issued and the grant was cancelled behind his back is false.

11. In the circumstances detailed above this Department proposed that the petition might be rejected and the stay granted vacated. Revenue and Law Depts have agreed with the views of this Department. /A

12. The file may be circulated to M(W) and M(R) for orders whether the appeal petition of Sri M. Srinivasa Nayak may be rejected and the stay granted vacated.

(7/12/53) 10.12.53

A.J. 20.12.53 Ag. P.W.D.

A above may be approved
M.S Rao
24/12/53

M(W) 'A' approved. 24/12

('A' approved.
Shanmuga Rajeshar
24/12)

M(R) M. A. Manickam
24.12.53.

Orders in circulation above.
A charge order is submitted below
Rev. may see before issue.
6.1.54.

SECRETARIAT GOVERNMENT
22 DEC 1953

P.W.D. U.O. No.
14047F/53.9

UNDER SECRETARY TO GOVT.
19 96F
JAN 1954
REVENUE DEPT.

8/9/11

To 21.1.54.

This dept last saw the case at pp 3-4 ante. (and also p 11 ante)

2. The summarising note and the orders in circulation on pp 13-18 above and the draft order below, may be perused.

3. The file may be returned to P.W.D.

11-1-54. 11/1/54

14/1/54 PWD

P.W.D.

W.O 1996 F/5 H-1

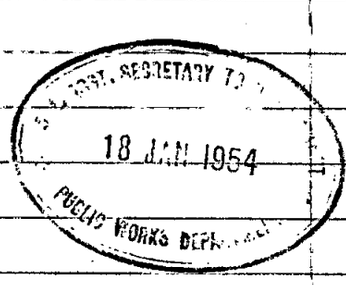
15-1-1954

The draft order below may now issue.

21/1/54. 21.1.54.

22.1.54

4293



Routine.

This file relates to the rejection of an appeal by Sri. M. Srinivasa Nayak and it is likely that on receipt of orders he may resort to a Court of Law. It therefore appears necessary that orders are taken on an "Order Paper". An Order Paper is accordingly put up below. The file may, if considered necessary, be recirculated to M(W) and M(R) for orders in the Order Paper.

30.12.53

The order paper may please be signed. This has been approved at Page 18 & 19

M(W) 30/12

DEPUTY SECRETARY TO GOVERNMENT
2 JAN 1954
PUBLIC WORKS DEPARTMENT

29/12/53 AM 29.12.53

SECRETARY TO GOVERNMENT
2-JAN 1954
PUBLIC WORKS DEPARTMENT

20,002—8-5-53.

ORDER PAPER.

PUBLIC WORKS **Department.**

Subject. Ports - Mangalore - North Reclamation area - Plot granted to Sri M.Srinivasa Nayak on an Order of Grant - Cancellation and proceeding under Land Encroachment Act - Appeal petition.

Recommendations of Circulating Officer.

The petition may be rejected and Stay granted may be vacated.
Dr. S Rao
D.S (Pers) 24/1/54

Orders of Ministers.

(1) M(W) The petition & the stay may be vacated.
Karpaka Rajan
31/1/54

(2) M(R) M. A. Muthukrishnan
2-1-54

(3)

(4)

(5)

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If orders passed in the Cabinet, Decision of Cabinet.